

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: Community Affairs Committee

BILL: CS/CS/SB 528, 530 & 858

SPONSOR: Community Affairs Committee, Domestic Security Committee, Senators Geller, Atwater, Diaz de la Portilla, and others

SUBJECT: Gasoline Stations/Backup Power

DATE: April 18, 2006

REVISED: _____

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. Pardue	Skelton	DS	Fav/Combined CS
2. Earlywine	Cooper	CM	Fav/7 amendments
3. Herrin	Yeatman	CA	Fav/CS
4. _____	_____	WM	_____
5. _____	_____	_____	_____
6. _____	_____	_____	_____

I. Summary:

This committee substitute for committee substitute (CS) establishes the Florida Disaster Motor Fuel Supplier Program Tax Credit Program. Those outlets meeting certification requirements may receive a state tax credit towards the purchase and installation of equipment to enable operations after a major disaster. It provides for criminal and civil penalties for a person who knowingly and willfully provides false information for purposes of claiming a tax credit under this provision.

This CS requires certain motor fuel dispensing facilities to have alternate generated power capacity in order to become operational after a major disaster. These facilities include motor fuel terminal facilities and wholesalers, newly constructed or substantially renovated motor fuel retail outlets, and certain existing motor fuel retail outlets that are located within one-half mile of an interstate highway or designated evacuation route. The CS requires businesses to keep and produce records documenting the installation and periodic maintenance of the equipment. The CS also provides for certain exemptions.

The CS establishes the Florida Disaster Motor Fuel Supplier Program within the Department of Community Affairs (DCA). The program allows for pre-certification of motor fuel retail outlets that will have the capacity to operate on alternate generated power after a major disaster. Such outlets will be able to provide priority fuel sales to emergency responders as well as fuel for the general public. In return, pre-certified outlets may receive a state tax credit towards the purchase and installation of equipment to enable operations after a major disaster.

This CS also:

- Provides that the regulation, siting, and placement of alternate power source capabilities and equipment at motor fuel terminal facilities, motor fuel wholesalers, and motor fuel retail sales outlets is preempted to the state;
- Requires the Division of Emergency Management to complete an inventory of generators owned by the state and local governments which are capable of operating during a major disaster;
- Provides that the Division of Emergency Management may keep a list of private entities, along with contact information, which offer generators for sale or lease and to make the list available to the public;
- Requires the Energy Office of the Department of Environmental Protection to review the situational progress in post-disaster motor fuel supply distribution; and
- Provides for severability should any provision of the act be held invalid.

This CS creates sections 212.099, 526.143, and several unnumbered sections of the Florida Statutes.

II. Present Situation:

During the 2005 hurricane season, Florida was affected by storm-related electrical power outages and concerns about fuel availability. In August and September of 2005, Hurricanes Katrina and Rita severely damaged portions of the nation's fuel production infrastructure. The immediate impact resulted in spot shortages and per gallon prices stabilizing at close to \$3 per gallon. Since Florida receives between 92-98 percent of its motor fuel supply by ship or barge¹, two-thirds of which comes from U. S. supply origins², damage to the Gulf Coast production infrastructure and disruption of the Gulf shipping lanes gave Florida further cause for concern. As Hurricane Wilma approached on October 22, 2005, four Gulf Coast refineries, 62 percent of Gulf oil production, and 52 percent of Gulf natural gas production remained closed.³

Florida, however, was able to seek additional sources of product and combined with conservation measures, experienced tight supplies in some locations, but no serious shortages prior to Wilma. On Saturday, October 22, 2005, Florida's fuel inventories stood at approximately 213 million gallons available in storage in the ports. Since Florida normally uses about 25 million gallons of motor fuel a day, the fuel in storage amounted to about nine days of supply available.⁴ Hurricane Wilma came ashore at approximately 6:30 AM on Monday, October 24, 2005, knocking out power to almost 3.5 million customers and forcing the temporary closure of South Florida ports including Port Everglades. Port Everglades supplies Florida with almost 40 percent of its transportation fuels.⁵

The fuel on hand immediately after Wilma's landfall remained at 9-days supply across the state with locations on I-4, I-95, I-75, and the Florida Turnpike reporting plenty of fuel.⁶ By mid-

¹ Source: Florida Department of Environmental Protection, 2005 Energy Forum.

² Source: Port Everglades Legislative Briefing, Jan. 18, 2006.

³ Florida SERT Hurricane Wilma Situation Report No. 8, October 22, 2005.

⁴ Id.

⁵ Source: Port Everglades Legislative Briefing, Jan. 18, 2006.

⁶ Florida SERT Hurricane Wilma Situation Report No. 14, October 24, 2005.

afternoon the next day, Tuesday, October 25, 2005, Port Everglades was reporting that it had generator capacity to off load fuel ships, but the shipping channel was still closed to vessel traffic.

On Wednesday morning, October 26, 2005, Port Everglades reported partial power restoration with two days worth of normal fuel distribution supply in its tanks. That day, service plazas on the Florida Turnpike from Miami to Yeehaw Junction began to experience five plus mile back-ups requiring consumers to wait 3 to 5 hours in line for fuel. Sales were limited to \$20 worth per vehicle which purchased about seven and a half gallons of fuel. Further north, Orlando's gas stations, which had power and a supply chain fed via pipeline from the Port of Tampa, were operating normally. By the end of that day an estimated 2.65 million customers across Florida remained without power. As a conservation measure, South Florida retail outlets also began adopting the policy of limiting fuel purchases to \$20 at those stations capable of operations.⁷

By noon on Thursday, October 27, 2005, ExxonMobil reported 55 stations were operational in Palm Beach, Broward, and Miami-Dade counties. Amerada Hess reported providing generators for back-up power at their South Florida facilities. Palm Beach, Broward, and Miami-Dade counties have approximately 1,820 gas stations and some other company gas stations were likely open, but not listed in the State Emergency Response Situation Reports. Fuel availability for the public was a problem.⁸ Fuel in storage in the ports statewide reflected an approximate seven day supply with replenishment priority given to emergency crews and first responders. Retail gas stations with available power along major transportation corridors and in major metropolitan areas were also given replenishment priority to support the needs of returning evacuees.⁹ By the end of the day, 2.1 million customers still remained without power.

Throughout the Hurricane Wilma recovery, bulk fuel inventories were sufficient to meet essential needs. The problem Floridians encountered was delivery at the local retail level. Fuel in local retail outlet tanks was for the most part inaccessible without the electrical power to dispense it. Media reports showed long lines at South Florida gas stations until power was gradually restored. By November 1, 2005, over 700,000 customers still were without power.¹⁰

Chapter 252, F.S., provides for Emergency Management in the State of Florida. Section 252.35, F.S., provides for emergency management powers for the Division of Emergency Management. Included in this section are provisions calling for the establishment of strategies for ensuring sufficient, reasonably priced fueling locations along evacuation routes.

Section 252.38, F.S., provides for emergency management powers of political subdivisions. Counties are required to establish an emergency management agency and develop and maintain an emergency management plan and program consistent with the state emergency management plan and program.

⁷ Florida SERT Hurricane Wilma Situation Report No. 20, October 26, 2005.

⁸ Florida SERT Hurricane Wilma Situation Report No. 23, October 27, 2005.

⁹ Florida Emergency Operations Center Media Release, October 27, 2005.

¹⁰ Florida Emergency Operations Center Media Release, November 1, 2005.

Section 526.303, F.S., provides definitions for the sale of liquid fuels including the definitions for motor fuels, retail outlet, sale, and terminal facility.

Taxes on Fuel - The federal taxes for highway fuels total 18.4 cents per gallon on gasoline and 24.4 cents per gallon on diesel fuel. Of these taxes, 0.1 cent per gallon is used for leaking underground storage tanks, 2.86 cents per gallon is directed to mass transit, and the remainder is utilized for the federal-aid highway program.

State taxes for fuels purchased in Florida total 20.9 cents per gallon. Of that amount, 4 cents is distributed to local governments. State fuel taxes and fees provide about 55 percent of the state's transportation funds. Sources of this funding include the state fuel tax, the State Comprehensive Enhanced Transportation System Tax (SCETS), aviation fuel tax, the rental car surcharge, and fees and taxes related to vehicle registration and titling. In addition to the state and federal taxes on fuel, local option fuel taxes may be levied up to 12 cents per gallon.

III. Effect of Proposed Changes:

Section 1 creates s. 212.099, F.S., to establish the Florida Disaster Motor Fuel Supplier Program Tax Credit Program. It allows participants in the Florida Disaster Motor Fuel Supplier Program to receive a tax credit for the value of the cost to install the appropriate equipment to meet certification requirements. The tax credit is limited to 25 percent against the tax remitted under chapter 212, F.S., not to exceed \$2000, for appropriate wiring and transfer switches. A motor fuel retail dealer may receive up to 25 percent against the tax remitted under chapter 212, F.S., not to exceed \$12,500, for the value of a generator that is permanently affixed to the site. The Division of Emergency Management within DCA must approve or deny the application for the credit. The CS provides a criminal penalty for knowingly and willfully giving false information for purposes of claiming a tax credit under this provision. This CS gives the Department of Revenue rulemaking authority to establish guidelines for qualifying for the tax credit.

Section 2 creates s. 526.143, F.S., to require certain motor fuel dispensing facilities to have alternate generated power capacity in order to become operational after a major disaster. The CS requires that motor fuel terminal facilities and wholesalers as defined in s. 526.303, F.S., must be capable of operating their distribution loading racks using an alternate generated power source.¹¹ Facilities must be able to begin the operation of loading equipment within 36 hours of a major disaster if the equipment is safe for operation. The equipment must be capable of a minimum of 72 hours of operation thereafter.

Newly constructed or substantially renovated motor fuel retail outlets¹² receiving a certificate of occupancy on or after July 1, 2006, are also required to have the capacity to operate with alternate generated power. "Substantially renovated" is defined as a renovation that increases the assessed value of the motor fuel retail outlet by more than 50 percent. The inspection for a

¹¹ Section 526.303, F.S., defines "terminal facility" as "any inland, waterfront, or offshore appurtenance on land used for the purpose of storing, handling, or transferring motor fuel, but does not include bulk storage facilities owned or operated by a wholesaler." This section also defines the term "wholesaler" as "any person, other than a refiner or dealer, who purchases motor fuel at a terminal facility and supplies motor fuel to retail outlets."

¹² Section 526.303, F.S., defines the term "retail outlet" as "a facility, including land and improvements, where motor fuel is offered for sale, at retail, to the motoring public."

certificate of occupancy for new or substantially renovated facilities must include a check for the required alternate generated power equipment and whether it is operational.

Motor fuel terminal facilities, wholesalers, and motor fuel retail outlets must maintain a written statement of periodic testing and ensured operational capability. Such documents must be furnished to the Division of Emergency Management and the director of the county emergency management agency upon request.

Certain motor fuel retail outlets that are within a half mile proximate to an interstate highway, or a state or federally designated evacuation route, are required to have the capacity to operate with alternate generated power no later than June 1, 2007. The motor fuel retail outlets that are subject to this requirement are:

- County populations having 300,000 or more residents – Stations having 16 or more fueling positions;
- County populations having 100,000 or more residents but fewer than 300,000 – Stations having 12 or more fueling positions; and
- County populations having less than 100,000 residents – Stations having 8 or more fueling positions.¹³

Installation of the required wiring and transfer switches necessary to provide alternate operational capacity must be performed by a certified electrical contractor. A copy of the documentation of such installation and a written statement of periodic testing and ensured operational capability are required to be maintained by the outlet or its corporate headquarters. Such documents must be furnished to the Division of Emergency Management and the director of the county emergency management agency upon request.

This CS specifies that the alternate generated power source requirement for motor fuel retail outlets applies to any outlet that is self-service, full-service, or a combination thereof, regardless of its location on the grounds of or ownership by a business not engaged primarily in the selling of motor fuel.

The CS provides an exemption from the alternate generated power source requirement for motor fuel retail outlets for: automobile dealers; persons who operate a fleet of motor vehicles; persons who sell fuel exclusively to a fleet of motor vehicles; and outlets that have an agreement with a public hospital that the hospital will provide the outlet with an alternative means of power generation onsite.

This CS also requires each corporation or other entity that owns or operates more than 10 or more motor fuel retail outlets to maintain at least one portable generator capable of providing alternate generated power for every 10 outlets or a multiple of 10 outlets plus an additional generator for every six outlets over the 10 outlets or a multiple of 10. The required generators for motor fuel retail outlets may be located anywhere in the state or out of state if located within 250 miles of the state, but must be available for use in the affected area within 24 hours after a

¹³ Note - A fueling position is considered to be the place where a single vehicle may be refueled. Fuel dispensers where vehicles may be fueled simultaneously on either side of the stand are considered to be two fueling positions.

disaster. A corporation or entity that owns 10 or more motor fuel retail outlets within a single domestic security region and that does not own outlets outside the region must maintain an agreement with one or more similarly situated entities outside the affected domestic security region to provide for the use of portable generators.

Section 3 establishes the Florida Disaster Motor Fuel Supplier Program within DCA. This program will allow motor fuel retail outlets to participate in a network of emergency responders. These outlets will provide fuel to government, medical, critical infrastructure, and other responders as well as the general public, during a declared disaster. Participation in the program requires precertification by the Division of Emergency Management or the director of the county emergency management agency. Precertification requirements will be established by the division or the county emergency management agency by June 1, 2007.

Businesses that are pre-certified will be:

- Issued a State Emergency Response Team (SERT) logo decal identifying their program participation;
- Required to have the capability to dispense fuel to SERT members within 24 hours of a major disaster;
- In addition to SERT members, also be able to choose to sell fuel to the general public or may be directed to do so by emergency managers;
- Able to request appropriate law enforcement personnel be provided on site to maintain civil order during operating hours;
- Required to remain open during a declared curfew to provide service for emergency personnel if directed to do so by emergency managers;
- Able to request priority fuel re-supply although such a request is not binding but shall be given consideration by emergency management officials; and
- Eligible to receive a state tax credit of up to 25 percent of the purchase and installation value of equipment necessary to meet certification requirements. The total tax credit may not exceed \$2,000 for wiring and transfer switches and \$12,500 for the purchase of a generator that is permanently affixed to the site per single location.

The Division of Emergency Management may adopt rules to administer the program. The division or the county emergency management agency may charge a fee to cover the cost of program administration. Such fee shall not exceed actual administration costs. Funds collected shall be deposited into the Emergency Management Preparedness Trust Fund or the appropriate county operating account depending upon which entity is administering the program.

The program provides for fuel purchasing priority for State Emergency Response Team members. Persons engaged in emergency response, law enforcement, health care workers, infrastructure repair workers, and government workers in critical services positions are all considered SERT members. Such persons must be able to produce valid, officially recognized documentation for priority fuel purchases and travel exemption during a curfew.

Section 4 preempts the regulation, siting, and placement of alternate power source capabilities and equipment at motor fuel outlets, motor fuel wholesalers, and motor fuel retail sales outlets to the state.

Section 5 requires the Division of Emergency Management to complete an inventory of generators owned by the state and local governments which are capable of operating during a major disaster. The division shall complete the inventory by January 1, 2007 and shall maintain it thereafter. The division may keep a list of private entities, along with contact information, which offer generators for sale or lease. Such a list shall be available to the public in written and electronic formats.

Section 6 requires the Energy Office of the Department of Environmental Protection to review situational progress in post-disaster motor fuel supply distribution. The department shall provide a report to the Legislature by March 1, 2007, including information about statewide compliance with s. 526.143, F.S., and identification of all stations participating in the Florida Disaster Motor Fuel Supplier Program.

Section 7 provides for severability should any provision of the act be held invalid.

Section 8 provides that the act shall take effect upon becoming a law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

On March 17, 2006, the Revenue Estimating Conference estimated that the impact of the tax credit program will result in a revenue loss of \$5.1 million in fiscal year 2006-07 and \$2.6 million in fiscal year 2007-08.

B. Private Sector Impact:

To engineer and pre-wire a gas station in compliance with this CS, installing the appropriate generator wiring, coupling, and transfer switch is estimated by industry representatives to cost approximately \$4,000 per station. This cost would be borne by the

station owner. Options to power the station by portable generator include purchase and guaranteed services contracts where a second party provides the generator, maintenance, and servicing for a fee.

Costs for purchasing a generator are dependent on each individual application. As an approximate general rule, standby generators cost \$300 to \$500 per kilo-watt. Thus a 20 KW standby generator would cost between \$6,000 and \$10,000. A 100 KW generator would cost between \$30,000 and \$50,000.

The cost of a guaranteed services contract would be subject to many variables and is unknown. However, it is likely to be considerably less than the cost of a purchased generator.

Tax credits against sales tax collections would offset up to 25 percent of the overall cost of equipment installation. Due to cost considerations and liability issues related to on-site installation of generating equipment and fuel storage, it is expected that many locations will do the wiring installation but not the whole equipment configuration relying instead on contract services for provision of the generator and fuel re-supply.

C. Government Sector Impact:

The CS provides rulemaking authority to the Department of Revenue to establish guidelines for qualifying for the tax credit under the Florida Disaster Motor Fuel Supplier Program Tax Credit Program.

The CS also provides rulemaking authority to the Division of Emergency Management to establish rules for the Florida Disaster Motor Fuel Supplier Program. The CS also provides for the establishment of fees to administer the program. Such fees shall not exceed the cost of program administration.

While the CS authorizes fees to administer the program, fees may not be levied without rulemaking authority. Rule adoption typically takes six to nine months and emergency rules are only valid for 90 days. The CS does not address the necessary start-up costs for the program.

To the extent that fuel retail outlets participate in the program, there would be some loss of sales tax revenue due to the tax credit for equipment installation. The tax credit would not be retroactive and many businesses have already completed the installation process.

The CS requires the Division of Emergency Management to complete and maintain an inventory of generators owned by the state and local governments which are capable of operating during a major disaster. Additional funding for this purpose is not provided.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.

VIII. Summary of Amendments:

This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.
